

California Regional Water Quality Control Board
Santa Ana Region

UPDATE TO THE

September 26, 2001

AGENDA

The following Administrative Civil Liability Complaints have been settled:

- | | |
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| 9 | Michael Bidart, Loyola Dairy #1 |
| 10 | Glenn Gorzeman, Gorzeman Heifer Dairy |
| 11 | Larry Fricker Company |

The following Administrative Civil Liability Complaints have been postponed:

- | | |
|----|--------------------------------|
| 12 | Master Development Corporation |
| 13 | Kaufman & Broad |

- | | |
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| Item 20 | Update on Beach Closures has been postponed to the
October 26, 2001 Board Meeting, due to illness. |
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Changes and postponements may occur to this agenda. Such updates will be placed on our website and automatically forwarded immediately to those who subscribe to our electronic mailing list. Anyone wishing to subscribe to our electronic agenda mailing list may do so, as follows: go to www.swrcb.ca.gov/rwqcb8 and choose "Subscribe to Electronic Mailing Lists" from the homepage. Those who are not subscribers should visit our website prior to the board meeting date.

Supporting documents for agenda items are now posted on our website at least 7 days prior to the scheduled meeting. To view or download the documentation, go to www.swrcb.ca.gov/rwqcb8 and select the item of interest.

California Regional Water Quality Control Board
Santa Ana Region

September 26, 2001

Item: 12

SUBJECT: Administrative Civil Liability Complaint (ACLC) No. 01-81, Master Development Corporation, San Bernardino County

On August 16, 2001, the Executive Officer issued ACLC No. 01-81 to Master Development Corporation (MDC) for violations of the State's General Permit for Storm Water Discharges Associated with Construction Activity (Order No. 99-08-DWQ, General Permit). MDC is alleged to have violated the General Permit at two of its construction sites located in the City of Ontario by failing to develop and implement an effective Storm Water Pollution Prevention Plan, by failing to maintain the best management practices at the site, and by discharging non-storm water containing pollutants to waters of the U.S. In the ACLC, the Executive Officer proposed an assessment of \$40,000 for the alleged violations.

On August 23, 2001, Regional Board staff met with MDC. At the meeting, MDC provided additional information regarding the alleged violations. Staff is currently reviewing this information and the discharger has indicated that it wants to settle the matter by waiving its right to a hearing and by paying the assessment. If the matter is not settled in a timely manner, staff will prepare a Staff Report for this item and will mail it separately to the Board and all interested parties prior to the Board meeting.

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION**

In the matter of:)	Complaint No. 01-81
)	for
Master Development Corporation)	Administrative Civil Liability
1401 Quail Street, Suite 100)	
Newport Beach, CA 92660)	
)	
Attn: Mr. Dave Walker)	

YOU ARE HEREBY GIVEN NOTICE THAT:

1. Master Development Corporation (MDC) is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), may impose liability under Section 13385(c) of the California Water Code.
2. A hearing concerning this Complaint will be held before the Board within sixty days of the date of issuance of this Complaint. The hearing in this matter will be scheduled for the Board's regular meeting on September 14, 2001 at the Orange County Water District, 10500 Ellis Avenue, in the City of Fountain Valley. MDC or its representative will have an opportunity to appear and be heard, and to contest the allegations in this Complaint and the imposition of civil liability by the Board. An agenda for the meeting will be mailed to you not less than 10 days prior to the hearing date.
3. At the hearing, the Board will consider whether to affirm, reject or modify the proposed administrative civil liability or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
4. MDC's construction sites, Crossroads Collection Project - Lot 9 and Lot 12, in the City of Ontario, are regulated under the State's General Permit for Storm Water Discharges Associated with Construction Activities, Order No. 99-08-DWQ, NPDES No. CAS000002 (General Permit), WDID Nos. 836S313033 and 836S313034.
5. MDC is alleged to have violated Provisions A.2, C.2, and C.3 of the General Permit. MDC failed to properly implement an effective Storm Water Pollution Prevention Plan and maintain Best Management Practices (BMPs), and discharged non- storm water containing pollutants to waters of the United States from the construction sites.
6. This complaint is based on the following facts:
 - a) On October 31, 2000, Board staff conducted a routine inspection of the two construction sites and observed sediments on the streets with no BMPs

implemented to control discharge of pollutants into the storm drain. Concrete wash water stains were evident around one of the storm drain catch basin inlets in Lot 12. The site superintendent stated that the streets were being flushed three days a week. Board staff advised the site superintendent that flushing down sediments into the storm drain is not an acceptable practice. Re-inspection of the two sites on November 2, 2000 revealed that the streets had been swept and the catch basins cleaned up.

- b) On June 6, 2001, Board staff re-inspected the two construction sites in response to Notices of Termination (NOTs) filed by MDC in May 2001. Board staff observed that neither of the two sites had been fully stabilized, which resulted in the denial of the NOTs. Landscaping activities at the sites were causing displacement of significant amounts of sediments onto the adjacent streets and pavements. Tracking of sediments was observed along the two driveways at Lot 9. Excess irrigation water from the partially landscaped areas was transporting sediments into the adjacent storm drains. The only BMP implemented at either site was a sandbag barrier placed around the storm drain inlet located on Barrington Avenue, downstream of Lot 9 and Lot 12. Heavy accumulation of sediments was observed behind this sandbag barrier, indicating that it had become ineffective in controlling sediments from entering the storm drain. Heavy accumulation of sediments was also observed around and leading to an unprotected catch basin within Lot 12 and three unprotected catch basins in Lot 9. Significant amounts of sediments were observed inside the catch basins themselves. A considerable amount of trash was also observed in the catch basins located within Lot 9. All these observations show that MDC had failed to properly implement an effective SWPPP and maintain BMPs at either site. As this was a late afternoon inspection, no one was present at the site to address the observed violations.
- c) On June 7, 2001, Board staff spoke with the contact person at MDC's headquarters to inform him of the violations and the need for immediate corrective action. The phone notification was followed by a written Notice of Violation for each site, dated June 8, 2001, outlining the General Permit violations observed.
- d) On July 10, 2001, Board staff re-inspected the sites and observed that sandbag barriers were placed to protect the storm drain inlets located within the two sites. However, heavy accumulation of sediments observed behind the sandbag barriers at Lot 12 indicated that the BMP was ineffective in preventing sediments from entering the storm drain. Additionally, some of the sandbags around the storm drain inlets within Lot 9 had deteriorated, creating an additional source of pollutants. Gaps existed between these sandbags, leaving the storm drain inlets not fully protected. A large pile of soil was placed adjacent to one of these inadequately protected storm drain inlets. Significant amounts of sediments were again observed on the streets and the pavement at both sites, continuing to pose a potential threat to water quality. All of these conditions indicated inadequate BMPs and a lack of proper maintenance of the BMPs at the two construction sites. The site superintendent was informed of the violations observed.

- e) On July 12, 2001, Board staff returned to the site and found that the deteriorated sandbags at two of the three storm drain inlets located within Lot 9 had been replaced and the gaps filled. However, the deteriorated sandbags around the third storm drain inlet located near the loading dock of the newly constructed building had not been replaced. There was a heavy accumulation of sediments around the Barrington Avenue and Lot 12 storm drain inlets. Past discharge of sediments into the Barrington Avenue storm drain catch basin inlet was evident, and a significant amount of sediments was observed in this catch basin. The drainage pipe within this catch basin was more than $\frac{3}{4}$ filled with sediments. The site superintendent was not present at either of the two sites at the time of this inspection.
 - f) On July 31, 2001, Board staff drove by the two sites and found that landscaping had been completed but evidence of past and potential sediment discharges were noted. Some of the sandbags around the Lot 9 storm drain inlets were again deteriorated. The sandbags around the storm drain drop inlet structure near the loading dock at Lot 9 were crushed and sediments were observed directly on the grates. Board staff also observed that nothing appeared to have been done with the heavy accumulation of sediments behind the sandbag barriers around the Lot 12 storm drain inlets. A long trail of sediments was observed in the drainage swale within Lot 12. Patches of sediments remained on the pavement within Lot 9.
 - g) On August 1, 2001, Board staff returned to the sites in an attempt to get the site superintendent to correct the recurring violations. He could not be located but Board staff was able to discuss the violations with the Lot 9 building occupant. The building occupant indicated that he had requested the site superintendent to remove the remaining patches of sediments from the pavement and was assured that a water truck will flush the sediments into the storm drain. This statement suggested willful violation of the General Permit requirements by the site superintendent especially since he had been advised a number of times by Board staff that flushing of sediments into the storm drain is a violation of the General Permit.
- 7. MDC is alleged to have violated Provisions A.2, C.2 and C.3 of the General Permit. MDC violated Provision C.2 by failing to properly develop and implement an effective SWPPP and violated Provisions A.2 and C.3 by discharging pollutants to waters of the United States from the construction sites. Pursuant to Water Code Section 13385 (a)(2), civil liability may be imposed for the preceding violations.
 - 8. Section 13385 (a)(2) provides that any person who violates waste discharge requirements shall be civilly liable. Section 13385 (c) provides that civil liability may be administratively imposed by a regional board in an amount not to exceed ten thousand dollars (\$10,000) for each day the violation occurs.
 - 9. Pursuant to Section 13385(c), MDC is civilly liable in the amount of \$100,000 (\$10,000 per day for five days of violation for two sites). The five days when the violations were

observed by Board staff are: 6/6/01, 7/10/01, 7/12/01, 7/31/01, and 8/1/01. The total maximum assessment is \$100,000.

10. Regional Board staff spent a total of 12 hours investigating this incident (@\$70.00 per hour), for a total staff time cost of \$840. Master Development Corporation saved approximately \$6,500 (8.36 acres for two sites at \$800/acre) by not implementing appropriate BMPs, including not sweeping the streets, and not properly maintaining the BMPs. These factors were considered in assessing the penalty indicated in Paragraph 11, below.

11. Section 13385 (e) specifies factors that the Board shall consider in establishing the amount of civil liability. After consideration of those factors, the Executive Officer proposes civil liability be imposed on MDC by the Board in the amount of \$40,000 for the violations cited above.

WAIVER OF HEARING

Master Development Corporation may waive its right to a hearing. If Master Development Corporation chooses to do so, please sign the attached waiver and return it, together with a check or money order, payable to the State Water Resources Control Board, for the amount of civil liability proposed in Paragraph 11, above, to:

Santa Ana Regional Water Quality Control Board
3737 Main Street, Suite 500
Riverside, CA 92501-3348

If you have any questions, please contact Ms. Milasol Gaslan at (909) 782-4419 or Mr. Michael Adackapara at (909) 782-3238. All legal questions should be referred to the Regional Board's staff counsel, Mr. Ted Cobb, at (916) 341-5171.

Date

Gerard J. Thibeault
Executive Officer

In the matter of:)	Complaint No. 01-81
)	for
Master Development Corporation)	Administrative Civil Liability
1401 Quail Street, Suite 100)	
Newport Beach, CA 92660-3028)	

WAIVER OF HEARING

I agree to waive Master Development Corporation's right to a hearing before the Santa Ana Regional Water Quality Control Board with regard to the violations alleged in Complaint No. 01-81. Enclosed is a check, made payable to the State Water Resources Control Board, in the amount of \$40,000. I understand that I am giving up Master Development Corporation's right to be heard and to argue against allegations made by the Executive Officer in this complaint, and against the imposition of, and the amount of, the liability proposed.

Date

for Master Development Corporation